

**PREPARED TESTIMONY OF  
STEVEN T. MILLER  
COMMISSIONER  
TAX-EXEMPT AND GOVERNMENT ENTITIES DIVISION  
INTERNAL REVENUE SERVICE  
BEFORE THE COMMITTEE ON WAYS AND MEANS  
OVERSIGHT SUBCOMMITTEE  
UNITED STATES HOUSE OF REPRESENTATIVES  
HEARING ON THE TAX DEDUCTION FOR FAÇADE EASEMENTS  
JUNE 23, 2005**

Mr. Chairman, Mr. Lewis, and distinguished Members of the Sub-Committee, thank you for this opportunity to discuss the law relating to the deductibility of contributions for façade easements, and the steps the Internal Revenue Service is taking to enforce it. Congress has allowed an income tax deduction for owners of certified historic structures who give up the right to change the exterior appearance, the façade, so that the historic qualities of the structure might be preserved for future generations.

The conservation contribution provisions of the Internal Revenue Code<sup>1</sup> play a vital role in the preservation of historic structures with unique public value.

As I will discuss below, donations of façade easements appear to be on the rise based on the number of properties located in registered historic districts that are applying for certification by the National Park Service as of historic significance to the district. The rise in donations of façade easements warrants our attention because the IRS has seen signs that certain valuation practices employed with regard to façade easements may compromise the policies and the public benefit that Congress intended to promote.

Let me say here that we are concerned that some taxpayers are being misled by charities, appraisers, and promoters into believing that the donation of a façade easement entitles them to a deduction greatly in excess of what is allowable. Taxpayers who are taking improper deductions for donated façade easements can expect to hear from us.

Later, I will discuss these trends and problems in more detail, and explain what we are doing about them. But let me first briefly explain the tax provisions relating to conservation easements generally and to façade easements in particular.

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<sup>1</sup> Internal Revenue Code (IRC) Section 170(h).

## **Legal Requirements for Deductions for Façade Easements**

The analysis of a façade easement focuses on two issues. The threshold question is whether the interest the taxpayer conveys is a valid conservation easement, in this case an easement exclusively for the preservation of a certified historic structure. The second is whether the value of the easement is correct, that is, whether the required appraisal is honest and reasonable, or fanciful and inflated.

### **Threshold question - conservation easements in general.**

A façade easement is one of four types of qualified conservation contributions described in section 170(h) of the Code. I will focus on façade easements today, but will cover all four types because they share some common features and sometimes intertwine. As we have recently testified, the Service has a large examination program underway with respect to open space conservation easements where we have seen problems due to a lack of significant public benefit and inflated valuations, but we have also begun an expanded examination program for façade easements.

To begin, let me note an important distinction between donations of real property and donations of qualified conservation contributions, including conservation easements. Under general income tax rules, to be eligible for a deduction for a charitable contribution, a taxpayer must give his or her entire interest in the property to the charity, reserving no substantial rights for himself or herself. Under these rules, the recipient charity becomes the owner of all title and interest in the property. The donor generally may take a charitable contribution deduction for the fair market value of the property. In these cases, as with other gifts of property, our main concern usually is whether the donor has valued the gift correctly.

There are only a few exceptions to this general rule, and a conservation easement is one of them. Section 170(f)(3)(B)(iii) allows a deduction for a qualified conservation contribution, even though it is only a gift of a partial interest in property.

Section 170(h) defines “qualified conservation contribution.” It is a contribution:

- Of a qualified real property interest, including an easement granted in perpetuity that restricts the use that can be made of the property. Section 170(h)(2)(C).
- To a qualified organization. Generally, these are public charities and governmental units. Section 170(h)(3). Importantly, the recipient charity must have the resources and commitment to monitor and enforce the restrictions.

- Exclusively for conservation purposes.

With respect to the last requirement, there are four allowable conservation purposes.

*1. The preservation of land areas for outdoor recreation or education of the general public.*

The donation of easements to preserve land areas for the recreational use of the general public or for the education of the public is the first conservation purpose enumerated in section 170(h)(4) of the Code. Examples include the preservation of a water area for public recreation such as boating or fishing, or the preservation of land for a nature trail or hiking trail. Unlike easements for the three other conservation purposes, these easements require regular and substantial physical access by the general public.

*2. The protection of a relatively natural habitat of fish, wildlife, plants or similar ecosystem.*

The second category of conservation easements is to protect a significant natural habitat or ecosystem in which fish, wildlife, or plants live in a relatively natural state. Significant natural habitats include the habitats of rare, endangered, or threatened species of animals, fish, or plants, or natural areas that represent high quality examples of a terrestrial or aquatic community, or natural areas that contribute to the ecological viability of a park, nature preserve, wildlife refuge, or wilderness area. Limitations on public access to these areas will not render an easement donation nondeductible. For example, a restriction on access to the habitat of a threatened species is consistent with the conservation purpose of the easement.

*3. The preservation of open space (including farmland and forest land) for either the scenic enjoyment of the public, or pursuant to a clearly delineated governmental conservation policy.*

To determine that an easement will protect the scenic enjoyment of the public, it must be shown that development of the land would result either in an impairment of the scenic character of the landscape, or would interfere with a scenic view that can be enjoyed from a public place. At a minimum, visual access to or across the property is required. Under the terms of an open space easement on scenic property, the entire property need not be visible to the public, although the public benefit from the donation may be insufficient to qualify for a deduction if only a small portion of the property is visible to the public. No matter whether the easement is for the scenic enjoyment of the public or, alternatively, is pursuant to

a governmental conservation policy, there must also be a significant public benefit that arises from an open space easement.<sup>2</sup>

*4. The preservation of a historically important land area or a certified historic structure.* Façade easements fall within this category, and this is the area that I am primarily concerned with in this testimony. The following discussion covers the law in this area.

#### **Façade Easements for Certified Historic Structures.**

Historic preservation easements are intended to preserve historically important land areas or certified historic structures. Historically important land areas include:

- An independently significant land area including any related historical resources (such as an archeological site), that meets the National Register Criteria for Evaluation administered by the National Park Service;
- Any land area within a registered historic district including any buildings on the land that contribute to the significance of the district; and
- Any land area, including related historical resources, adjacent to a property listed individually in the National Register of Historic Places, if the land contributes to the historic or cultural identity of the listed property.

Certified historic structures mean buildings, structures, or land areas that are:

- Listed in the National Register of Historic Places; or
- Located in a registered historic district and certified by the National Park Service as being of historic significance to the district.

For a contribution of a historically important land area or certified historic structure to qualify for an income tax deduction, the public must have at least some visual access to the donated property. In the case of a historically important land area, the entire property need not be visible to the public, but the public benefit from the donation may be too small to qualify for a deduction if only a small part of the property is visible. If the historic land area or certified historic structure is not visible from a public way (for example, if it is hidden by a wall or by shrubbery, or is too far from the public way), the terms of the easement must

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<sup>2</sup>In determining whether a significant public benefit is present, the regulations provide a non-exclusive list of eleven factors that may be considered. Section 1.170A-14(d)(iv)(A). Some of these factors involve the uniqueness of the land; the intensity of current or foreseeable development; the likelihood of development that would lead to the degradation of the scenic, natural, or historic character of the area; the opportunity for the general public to use the property or appreciate its scenic values; and the importance of the property in maintaining a local or regional landscape or resource that attracts tourism or commerce to the area. These factors indicate the kind of open space contemplated as having a significant public benefit.

be such that the general public is given the opportunity on a regular basis to view the characteristics of the property that are preserved by the easement.

Factors to consider in determining the type and amount of public access include the historical significance of the property, the nature of the features that are the subject of the easement, the remoteness or accessibility of the site, the possibility of physical hazards to the public viewing the property, the extent to which public access would be an unreasonable intrusion on any privacy interests of individuals living on the property, the degree to which public access would impair the preservation interests that are the subject of the donation, and the availability of opportunities for the public to view the property by means other than visits to the site.

If the terms of an easement allow future development in a registered historic district, a deduction is allowable only if the easement requires such development to conform to appropriate local, state or federal standards for construction or rehabilitation within the historic district.

#### **Amount of the deduction – the appraisal and rules of valuation.**

If the façade easement contribution meets all requirements of section 170, and qualifies as a conservation contribution, the inquiry then turns to the valuation of the easement. Generally, the amount of the deduction may not exceed the fair market value of the easement on the date of the contribution (reduced by the fair market value of anything received by the donor in return). Fair market value is the price at which the contributed property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and each having reasonable knowledge of relevant facts.

If there is a substantial record of sales of easements comparable to the donated easement (such as purchases pursuant to a governmental program), the fair market value of the donated easement is based on the prices of the comparable sales. If no substantial record of marketplace sales is available to use as a meaningful or valid comparison, as a general rule (but not in all cases) the fair market value of a conservation restriction is equal to the difference between the fair market value of the property before the granting of the restriction and the fair market value of the property after the granting of the restriction.

Under the regulations, if such before-and-after valuation is used, the fair market value of the property before contribution must take into account not only the current use of the property but also an objective assessment of how immediate or remote is the likelihood that the property, absent the restriction, would in fact have been developed, or its historic character modified. The valuation also must take into account the effect of any zoning, conservation or historic preservation laws that already restrict the property's potential highest and best use. Further, there may be instances where the grant of a conservation restriction may have

no material effect on the value of a property, or may in fact enhance, rather than reduce, the value of property. In such instances, no deduction would be allowable. For certified historic structures, the fair market value of the property after contribution of the restriction must take into account the amount of access permitted by terms of the easement. Additionally, if before-and-after valuation is used, an appraisal of the property after contribution of the restriction must take into account the effect of restrictions that reduce the potential fair market value represented by highest and best use, but nevertheless permit uses of the property that will increase its fair market value above that represented by its current use.

If the donor reasonably can expect to receive financial or economic benefits greater than those to be obtained by the general public as a result of the donation of a conservation easement, no deduction is allowable. If development is permitted on the property to be protected, the fair market value of the property after contribution of the restriction must take into account the effect of the development.

#### **The recipient of the easement - qualified organizations.**

To be qualified to receive a conservation easement, an organization must be a governmental unit, or one of several types of public charities. To be a qualified organization, the organization also must be committed to protect the conservation purposes of the donation, and must have the resources to enforce the restrictions. However, it need not set aside funds for this purpose.

As with any charity, a qualified organization is subject to certain rules described in section 501(c)(3). The organization must operate exclusively for charitable, educational, or other tax-exempt purposes. It cannot serve private interests unless such interests are only incidental to its exempt purposes, and it cannot serve a substantial nonexempt purpose. If the organization becomes derelict in its duties to ensure that donated easements continue to serve an exempt purpose, or if the organization subordinates the interests of the public to the interests of the donor, the organization's tax exemption may be open to question.

#### **Role of the National Park Service and Trends with Respect to Façade Easements**

A principal qualification for eligibility for a historic easement income tax deduction is that the National Park Service (NPS) list the property in the National Register of Historic Places, or recognize the property as located in a registered historic district and certify that the property is of historic significance to that district. Thus, the NPS serves as a gatekeeper for what is historically significant. The Service relies upon the NPS for this determination. As years pass, the NPS, using its criteria for evaluation of these properties, will certify as historic an increasing number of our older houses, buildings, and neighborhoods that significantly or

uniquely represent our past. We should expect more and more neighborhoods that meet the NPS criteria to apply for certification and be deemed historic. We also should expect the owners of more and more structures in those and in existing historic districts to apply for certification as the tax benefits of façade easement donations are promoted.

As we work these cases, there appear to be two distinct categories of property with respect to which a façade easement is donated: residential and commercial. The distinction matters to our discussion because the valuation problems discussed below vary by type of property. That is, appraisers have used different approaches in valuing these two categories.

The number of possible façade easements is large. NPS data tells us that there are more than 1.27 million buildings that either are already listed in the National Register of Historic Places or are existing properties that may contribute to the historic character of an existing historic district (a new building in a historic district would not be included in the above number).

Our information systems do not currently provide us with the ability to identify the number of current easements or the claimed value of deductions for these easements, including any façade easements. However, it appears that the number of façade easements is increasing based on the number of certifications applied for and approved by NPS. The number of applications to NPS for certification of historic property has grown in the last five years. NPS data shows that 74 applications were submitted between 1995 and 1999; 154 were submitted in 2001; 705 in 2003, and 750 last year. While we believe that this growth is reflected in the number of residential façade easements, it is less clear whether commercial façade easements are also increasing.

Certifications also seem to be geographically clustered. The largest number of façade easements is concentrated in three locations: Washington, D.C., New York City, and Chicago. We believe that qualified recipient organizations actively solicit easements in selected neighborhoods by promising large deductions. One resident on a street applies, and then another, and soon the whole block may be dotted with them.

## **Internal Revenue Service Enforcement in the Area of Façade Conservation Easements**

### **Overview.**

In this portion of my testimony I will outline the enforcement actions the IRS has taken in this area and what we have found to date. First, I will discuss the reporting requirements for exempt organizations and their donors, and steps the IRS is taking to improve such reporting. Then, I will discuss our examination activity in the area.

## **Reporting.**

Façade easements are easier for us to track than other types of conservation easements because of valuable data we receive from the NPS. At least with respect to newer certifications, NPS has information that identifies the owners of properties eligible for façade easement donations. Consequently, the reporting improvements for donors which I will outline, while helpful in the façade easement area, will assist us primarily with respect to open space, wildlife habitat, and recreational easements, for which we do not have a source of information similar to the NPS.

We need to be able to determine systematically which organizations and individuals have been involved in conservation easement transactions. To address this, we are revising our tax forms to gather more information about organizations with conservation easement programs and their donors. We recently revised Form 1023, "*Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*," to add new questions that will help us identify organizations with conservation easement donation programs in order to ensure that they meet the requirements for exemption, including the ability to meet conservation responsibilities.

Charities and other tax-exempt organizations annually file Form 990, "*Return of Organization Exempt From Income Tax*," an information return that reports income, expenses, assets, and liabilities of these organizations, along with specific information about their operations and programs. We are concerned that the public is not getting enough information from Form 990 to understand what activities many of our charities are engaged in. As an interim step, we will revise the 2005 Form 990 so that both the IRS and the public have a better understanding of which organizations receive easements. We expect that this will be in the form of a new checkbox that will identify those organizations that received a conservation easement donation during the year.

All exempt organizations can now file their annual returns electronically. Electronic filing was available for Form 990 and 990EZ filers in 2004, and is available this year as well for private foundations, which file Form 990-PF. We want to encourage e-filing because it reduces taxpayer errors and omissions and allows us, and ultimately the public, ready access to the information on the return. For this reason, we have required e-filing in certain cases. Under proposed and temporary regulations, we will require electronic filing for larger public charities and all private foundations by 2007.

We also are working on larger scale improvements to the Form 990. The current form could be more user-friendly while also eliciting more of the information that we need. We anticipate that the revised form will have specific questions or separate schedules that focus on certain problem areas. For example, filers



should not be surprised to find specific schedules or detailed questions relating to credit counseling activities, supporting organizations, compensation practices, and organizational governance. The easement area is also under consideration. The timing of the revision of the Form 990 is dependent on budget issues and our partners, including the states, 37 of which use the Form 990 as a state filing, and software developers.

When donors make gifts of property in one year with a claimed value that exceeds \$500, they file Form 8283, "*Noncash Charitable Contributions*," with their income tax returns. On the form donors list the property they are donating. For most donations with a claimed value that exceeds \$5,000, the form requires a written appraisal<sup>3</sup> and the identity and signature of the appraiser, along with a signed acknowledgement of the gift by an officer of the charity that receives the gift.

We are revising Form 8283 to provide a new checkbox to identify donors of conservation easements, and we are modifying the form's instructions to better describe what is permissible and to obtain better information on the type of property donated. The revised form also will reflect new qualified appraisal requirements enacted by Congress last year in section 170(f)(11). Where the donation is in excess of \$500,000, the form will require taxpayers to attach the appraisal to the return.

Once implemented, these changes will enable us to better identify the universe of organizations and donors who are involved in conservation easement transactions, including façade easement transactions, and they will allow us to better target our future enforcement efforts. In the meantime, we will pursue the active enforcement program we have in place now.

### **Examination Activity in the Area of Façade Conservation Easements - Review and Findings to Date.**

#### **Formation of a cross-functional team.**

Earlier this year, we formed a cross-functional team to attack all aspects of the problem of conservation easements. The team includes members from three IRS business units (Large and Midsize Business, Small Business and Self-Employed, and Tax Exempt and Government Entities), as well as representatives from the IRS Appeals Office, Chief Counsel, and the Office of Professional Responsibility.

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<sup>3</sup> The requirements for qualified appraisals are set forth in section 1.170A-13(c)(3) of the Income Tax Regulations. Such appraisals must be made by a qualified appraiser no earlier than 60 days before the date of the donation and no later than the due date of the return (including extensions) on which a deduction is claimed. The appraiser must sign and date the appraisal and may not charge a fee based upon a percentage of the value of the property or based upon the amount of the deduction claimed by the donor. The appraisal must include certain specified information.

Our team has selected cases and set strategic priorities as to which cases are worked first. It has trained and is continuing to train IRS agents and appraisers on conservation easement issues, and will serve as a resource for legal and technical questions for our field personnel.

Toward this end, the IRS is sponsoring an e-mail address to receive questions and concerns from the community, so that the group can collect stakeholder input as we move forward in this area. The address is [easementquestions@irs.gov](mailto:easementquestions@irs.gov), and it is up and running.

We are looking not only at donors and recipient charitable organizations, but also at promoters. The team will be alert for developing patterns of abuse and will identify promoters of potentially abusive easement donations. In the course of our examinations, we are finding appraisers that appear to be associated with abusive promotions on a recurring basis. We are going to shine a searchlight in their direction, and will use all civil and criminal tools at our disposal to combat abuses. We also will continue to partner effectively with both the NPS and state and local preservation offices.

#### **Inventory of cases and findings to date.**

*Donor Audits.* As noted, the Service has a more mature enforcement program looking at open space easements. However, we also have done work in the façade area and will be doing much more into the future.

Currently, we have 30 façade easement audits underway, including 9 audits of façade easement donations relating to commercial property. With regard to residential properties, the team is currently comparing the NPS data on some 1600 certifications to our master file to determine which cases to pursue next. We are also comparing this data to partnership return data in order to identify and select appropriate cases involving commercial property.

In some of the geographic areas where residential façade easements are clustered, we may also pursue market studies to determine the proper valuation of easements in those areas to use in our enforcement program.

Our findings to date indicate that while the threshold requirements for a qualified conservation contribution are being met, taxpayers are taking excessive deductions for façade easements. As I have mentioned, there are two categories of property, residential and commercial. Generally, appraisers have used different approaches to these two categories, but with inflated results in both.

In granting a façade easement, residential owners agree not to modify the façade of their historic house and they give an easement to this effect to a recognized charity. However, if the façade was already subject to restrictions under local

zoning ordinances, the taxpayers may, in fact, have nothing or very little to give up. A taxpayer cannot give up a right to change the façade of a building if he or she does not hold the right in the first place, as may be the case where a zoning ordinance has taken this right from the property owner. Even if a zoning variance is possible, both the likelihood of that variance and the extent of change likely to be permitted under a variance would reduce the value of a façade easement.

Some rather troubling valuation practices in residential housing have come to our attention. Based upon a sample of cases from Washington, D.C., New York City, Chicago, and Cleveland, it appears that appraisers are not undertaking any meaningful analyses with respect to façade easements, but instead may simply be placing a value on a donated façade easement that is equal to a fixed percentage (generally 10 -15%) of the value of the underlying property, with little support provided for the percentage selected.

Let me state plainly that those who say the Service will accept a flat percentage of 10 - 15% as a reasonable residential façade valuation without any underlying analysis are wrong. There is no such rule, and taxpayers and appraisers should not proceed under the assumption that this constitutes a safe harbor. It does not.

Issues we find in commercial property façade easements are different. Although we have seen fixed percentages being taken in these cases, there are often additional valuation problems. In some cases, the appraiser may use extraordinary valuation methods to achieve a high value for the donation. These methods include inflating the value of the property before the donation by ignoring sales of comparable properties and asserting instead an inflated value for a theoretical highest and best use of the property. The commercial cases tend to resemble the issues we see in the valuation of open space easements, such as how to value restrictions on future development. Appraisals may ignore one or more important issues, such as whether the claimed highest and best use is in fact economically feasible. We have seen cases where development is assumed to be successful (for example, added office or hotel space) where such development actually is questionable because of current market conditions (for example, where there is a glut of such space).

Other assumptions are made that are equally troubling. Existing zoning restrictions are disregarded by assuming that the restrictions will be waived by local authorities, where experience indicates otherwise. Some appraisals may even assert an enhanced valuation of the property before the easement is donated by assuming the foregone development has already taken place, and by ignoring the time and expense associated with carrying out the potential development.

*Audits of the recipient charity.* We are also looking at a number of charities that are engaged in the receipt of conservation easements generally, including some that pertain specifically to façade easements. This includes some charities that

we believe may have been involved in particular abuses. Currently, we have seven organizations under examination, and we will begin examination of four more organizations shortly. As I mentioned, it appears that certain of these organizations actively solicit façade easements within historic neighborhoods. The promotional materials offer the possibility of large deductions to the owners, and supply everything the owner needs to complete the conveyance of the easement. The solicitation materials may refer the owner to preferred appraisers, and may require the owner to pay a fee to the organization for arranging the transaction and, ostensibly, for monitoring the easement into the future.

*Promoter referrals and audits.* We are also seeing promoted investor syndications seeking to profit from conservation easements. To date these appear to be limited to areas other than façade easements. This may be more prevalent in certain states that allow transfers of tax credits. Some of these states have provided referral information to us on questionable easement donations.

We are currently looking or have looked at the activity of more than 20 promoters, including some involving façade easements, and five promoters involved in easements have been recommended for investigation. Promoters and other persons involved in these transactions may be subject to penalties under sections 6700, 6701, and 6694, or an injunction under section 7408.

*Sanctions against appraisers.* Before 1984, attorneys and accountants, but not appraisers, could be barred from practice before the IRS. In 1984, Congress modified the law, and Circular 230 was modified to include appraisers. Circular 230 currently requires that the section 6701 penalty, aiding and abetting in the understatement of tax, be imposed before action may be taken against an appraiser. The IRS must demonstrate, by a preponderance of the evidence, that the appraiser had actual knowledge that the taxpayer would rely on a document that would lead to an understatement of tax by the taxpayer.

When a section 6701 penalty is asserted against an appraiser, an information referral to the Office of Professional Responsibility is mandatory. In light of the appraisal practices we have outlined above, we are actively considering penalties against appraisers. We have alerted the Director, Office of Professional Responsibility, of possible referrals of at least three appraisers arising out of questionable valuations of donated easements. To date, these appraisers work in the open space easement area.

## **IRS Challenges**

Although the conservation contribution provisions of the Internal Revenue Code play a vital role in the preservation of our historic structures, we are concerned

with valuations of property that appear to be informed primarily by tax considerations rather than actual property values. In challenging such valuations, our outstanding but small staff of appraisers (48 in all, 20 of who work wholly or in part on 170(h) cases) must perform detailed appraisal work using accepted and recognized valuation standards. It is neither easy nor quick work. Our work to date raises the question of whether rules governing appraiser qualifications, appraisal standards, and the standards for referral to the Office of Professional Responsibility are sufficient.

As you discuss changes in this and other areas involving the tax-exempt sector, I also ask you to recall and consider the focus areas outlined in Commissioner Everson's testimony before the Committee on Ways and Means on May 26, 2005. You may recall that these focus areas include whether there are gaps in the statutory or regulatory framework; whether the IRS has the flexibility it needs to respond appropriately to compliance issues; whether more should be done to promote transparency; and whether we have the resources we need to do the job. In this regard, please consider the intermediate sanction recommended by the Administration when taxpayers claim charitable contribution deductions for contributions of perpetual conservation restrictions, but the charities that receive those contributions fail to monitor and enforce the conservation restrictions for which the charitable contribution deductions were claimed.

The Administration has made this recommendation in its FY 2006 budget proposals.<sup>4</sup> Specifically, the proposal would impose significant penalties on any charity that removes or fails to enforce a conservation restriction for which a charitable contribution was claimed, or transfers such an easement without ensuring that the conservation purposes will be protected in perpetuity. The amount of the penalty would be determined based on the value of the conservation restriction shown on the appraisal summary provided to the charity by the donor.

The Secretary would be authorized to waive the penalty in certain cases, such as if it is established to the satisfaction of the Secretary that, due to an unexpected change in the conditions surrounding the real property, retention of the restriction is impossible or impractical, the charity receives an amount that reflects the fair market value of the easement, and the proceeds are used by the charity in furtherance of conservation purposes. The Secretary also would be authorized to require such additional reporting as may be necessary or appropriate to ensure that the conservation purposes are protected in perpetuity.

In conclusion, the IRS remains committed to doing all it can to make the conservation easement provisions of the tax code work in the manner Congress intended. Legitimate conservation easements serve an important role in the preservation of our open lands and our cultural heritage. However, what began

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<sup>4</sup> *General Explanations of the Administration's Fiscal Year 2006 Revenue Proposals*, Department of the Treasury, February, 2005, pp. 112 – 113.

as a laudable conservation easement program to save our open space, natural habitats, and historic sites may have become distorted. We are committed, as we progress through our enforcement program, to determine the size of this distortion and to take all steps necessary to stem the abuse of these programs. Clearly, the public should be able to expect that only those donations of façade and other easements that are fairly valued and that result in an identified public good will result in favorable tax treatment.